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Federal Communications Commission

FCC 98-217

DISPATCHED 11/11/54

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**1998 Biennial Regulatory Review –
Amendment of Part 0 of the
Commission’s Rules to Close the
Wireless Telecommunications
Bureau’s Gettysburg Reference
Facility**

WT Docket No. 98-160

NOTICE OF PROPOSED RULEMAKING

Adopted: August 31, 1998

Released: September 18, 1998

Comments Due: 30 days after publication in the Federal Register

Reply Comments Due: 45 days after publication in the Federal Register

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

1. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM) we propose to amend our rules to eliminate the Wireless Telecommunications Bureau's (Wireless Bureau) Reference Room in Gettysburg, Pennsylvania. We also propose to update Section 0.453 of the Commission's Rules to accurately reflect the location and availability of license application information within the Wireless Bureau.¹

2. The Commission is constantly seeking to streamline its operations and improve the quality of service we provide. In a Notice of Inquiry released February 16, 1996², we solicited suggestions for improving the Commission's processes. Those who responded with comments suggested that the Commission's expert staff be utilized to perform tasks other than ministerial ones. These ministerial tasks include retrieving applications, responding to inquiries related to those applications, and other activities not involving the use of agency discretion.

¹The Commission originally adopted an *Order* (FCC 98-95) on May 14, 1998 amending the Commission's Rules as discussed in this paragraph. That Order was vacated on the Commission's own motion on July 13, 1998 (FCC 98-158). Subsequent to adoption of the original Order, a Petition for Reconsideration was filed by Brown and Schwaninger challenging the Commission's decision to close the Gettysburg reference facility. Since the original Order was vacated, the Petition for Reconsideration will be dismissed as moot.

²See Improving the Commission's Processes, PP Docket 96-17, *Notice of Inquiry*, 11 FCC Rcd 14006 (February 16, 1996)

3. Section 11 of the Communications Act, as amended, requires the Commission to conduct a biennial review of regulations applicable to providers of telecommunications services and to repeal or modify any regulation it determines to be no longer necessary in the public interest.³ Accordingly, the Commission initiated a comprehensive 1998 biennial review to promote meaningful deregulation and streamlining where such action is warranted.⁴ We believe that the proposals made in this NPRM will serve to streamline the process of retrieving licensing information and will provide the public with better service by making data available via public access as opposed to requiring interested parties to do their research in Gettysburg.

2. BACKGROUND

4. The Gettysburg reference facility operates differently from other Commission reference rooms. It contains several personal computers networked to allow users to query the Commission's licensing databases for wireless services. These computers can also access pending application data for most land mobile services. Since these computers were made available in the Gettysburg reference facility several years ago, requests to access the actual paper applications have significantly decreased. If desired, the paper applications can be retrieved by the Commission's staff in Gettysburg or by the duplication services contractor.⁵

5. In addition to accessing data through computers at the Gettysburg reference facility, the public may also retrieve this information from their own computers. By connecting to the Wireless Bureau's home page at the Commission's World Wide Web site⁶, interested parties can retrieve the same data available on the computers in the Gettysburg reference facility.

6. The use of electronic filing to request authorizations for wireless services continues to increase. Currently, more than half of the applications for wireless services are received by electronic means.⁷ Since no paper is involved with these applications, retrieval of data concerning these requests must be done by accessing the Commission's databases.

7. The opportunity to streamline operations by eliminating the Gettysburg reference facility will be further enhanced by two initiatives. First, the Commission is undertaking a major redevelopment of its application filing and licensing processes for wireless services. The Universal Licensing System (ULS) will combine 11 different licensing systems that perform similar functions into a single automated system. It will make electronic filing easier and more efficient, thereby

³47 U.S.C. §161(a)(2).

⁴See 1998 Biennial Review of FCC Regulations Begun Early, FCC News Release (November 18, 1997).

⁵Currently, the Commission's duplication services contractor is International Transcription Service (ITS).

⁶<http://www.fcc.gov/wtb/>

⁷This includes on-line filing, electronic data interchange, electronic batch filing, and extracts of data provided by Mellon Bank (the Commission's lockbox bank for fees) for renewals and Restricted Radiotelephone Operator Permits.

reducing the likelihood that paper applications will be filed.

8. Second, the Commission proposed in a recently released Notice of Proposed Rulemaking⁸ that applicants and licensees in all Wireless Bureau radio services be required to submit applications electronically beginning on January 1, 1999. If this proposal is adopted, there will be no paper applications to be requested and reviewed in a public reference room. If this proposal is not adopted, or is modified to require only certain wireless applicants to file electronically, all data submitted by applicants will still be available for electronic access by the public.

3. DISCUSSION AND CONCLUSION

9. We propose to close the Gettysburg reference facility 90 days after release of a final order adopting this proposal. Due to its rural location outside the Washington, DC area, the Gettysburg reference facility does not support many users. By closing the reference room in Gettysburg, we are streamlining our processes in recognition of the increase in electronic filing and in recognition of the availability of information to many more potential users due to the accessibility of Commission license and application records on the Commission's web site.

10. We believe the access to application and licensing data made available by the Commission through the Internet will provide improved research capabilities over what is currently available in the public reference room in Gettysburg. If the Gettysburg reference facility were to close, the public would continue to have options to obtain copies of paper documents for those applications not filed electronically. The Wireless Bureau's staff in Gettysburg would continue to accept requests to retrieve documents available for public inspection. The Commission's duplication services contractor would also make copies of documents by request for an established fee. We conclude that the improvements in public access to licensing data, coupled with alternatives for acquiring copies of paper applications, enable the Commission to close its Gettysburg reference facility. We seek comment on this proposal and conclusion.

11. Related to the proposal discussed above, we also propose to make two minor amendments to Section 0.453 to reflect changes made in previous Commission reorganizations. Section 0.453(g)(1) states that application files and related materials for Microwave Point-to-Point and Digital Electronic Message Service (DEMS) are located in the Common Carrier Bureau, Domestic Facilities Reference Room in Washington, DC. For the past five years, applications for those services have been received and processed in Gettysburg. All station records were transferred to Gettysburg at that time and have been accessible through the Gettysburg reference room. If the Gettysburg reference room were to close, these records would be available for electronic public access on the Commission's website. Therefore we propose to delete Section 0.453(g)(1) from the Commission's rules.

12. Section 0.453(h) identifies the contents of the Common Carrier Bureau, Mobile Services Reference Room. On December 1, 1994, the Mobile Services Division of the Common Carrier Bureau was merged with the Private Radio Bureau to form the Wireless Bureau. At that time the Mobile Services Reference Room became the Commercial Wireless Reference Room and

⁸See Amendment of the Commission's Rules to Facilitate the Development and use of the Universal Licensing System in the Wireless Telecommunications Bureau, WT Docket 98-20, *Notice of Proposed Rulemaking* (FCC 98-25)(March 18, 1998).

continued to provide access to applications for cellular, commercial paging, rural radio and air-ground radiotelephone services. We propose to amend Section 0.453(h) to reflect this change.

4. REGULATORY FLEXIBILITY ANALYSIS

13. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding, because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities defined in Section 601(3) of the Regulatory Flexibility Act. The proposed changes will place no significant burdens on small business entities, and other changes being implemented by the Commission will make it easier for those entities to research and retrieve licensing data electronically regardless of their location. The Commission's Office of Public Affairs, Reference Operations Division shall cause a copy of this Notice of Proposed Rulemaking, including this certification, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

5. PROCEDURAL MATTERS

14. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1201, 1203, and 1.1206(a).

15. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments to the *NPRM* on or before 30 days after publication of this *NPRM* in the Federal Register and reply comments on or before 45 days after publication of this *NPRM* in the Federal Register. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus ten copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

16. Parties are encouraged to submit comments and reply comments on diskette for possible inclusion on the Commission's Internet site so that copies of these documents may be obtained electronically. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements presented above. Parties submitting diskettes should submit them to the Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 2100 M Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using Word Perfect 5.1 for Windows software. The diskette should be submitted in "read only" mode, and should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comment), and date of submission.

6. ORDERING CLAUSES

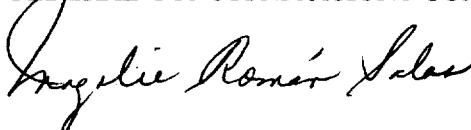
17. IT IS ORDERED that, pursuant to the authority of Sections 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161, and 303(r), this NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Brown and Schwaninger regarding the Commission's *Order* (FCC 98-95) adopted May 14, 1998, is dismissed as moot due to that Order being vacated on June 13, 1998 (FCC 98-158).

18. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

19. IT IS FURTHER ORDERED THAT, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments to this NOTICE OF PROPOSED RULEMAKING on or before 30 days after publication of this NOTICE OF PROPOSED RULEMAKING in the Federal Register and reply comments on or before 45 days after publication of this NOTICE OF PROPOSED RULEMAKING in the Federal Register.

20. For further information, contact Walter Boswell, Wireless Telecommunications Bureau, (717) 338-2601.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

Separate Statement of Commissioner Harold W. Furchtgott-Roth**In re: Notice of Proposed Rulemaking****1998 Biennial Regulatory Review -- Amendment of Part 0 of the Commission's Rules to Close the Wireless Telecommunications Bureau's Gettysburg Reference Facility**

I support adoption of this NPRM. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review all regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "determine whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" - - that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

* * * * *

**Appendix
Proposed Rules**

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read as follows:

Authority: § 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

Sections 0.453 and 0.455 are amended to reflect the closing of the public reference room in Gettysburg, PA:

§0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC:

- (g) *The Common Carrier Bureau, Network Services Division Public Reference Room.*

Section 214 applications and related files, to the extent that they concern domestic communications facilities and services are available for inspection at this location.

- (h) *The Wireless Telecommunications Bureau, Commercial Mobile Services Reference Room.*

The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

- (1) Station files containing a complete history of data submitted by the applicant that has been approved by the Commission which includes maps, diagrams, petitions, co-channel searches, and other background material.

- (2) Pending files containing applications for additional facilities or modifications of existing facilities.

- (3) Cellular Granted Station files and related materials.

- (4) Pending cellular applications and related files.

- (5) Petitions and related materials.

- (l) (Reserved)

- (o) Electronically stored application and licensing data for commercial radio operator applications and all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Fixed Point-to-Point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications.

§0.455 Other locations at which records may be inspected.

Wireless Telecommunications Bureau. See §0.453(o) of this chapter.